



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0620; FRL-9964-83-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Ozone Offset Requirements in Davis and Salt Lake Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on August 20, 2013, and on June 29, 2017. The submittals revise the portions of the Utah Administrative Code (UAC) that pertain to offset requirements in Davis and Salt Lake Counties for major sources. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the *Federal Register*]**.

ADDRESSES: Submit your comments, identified by EPA-R08-OAR-2016-0620 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for the EPA?

a. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

b. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

- ii. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah sent the EPA revisions to their nonattainment permitting regulations, specifically to address EPA identified deficiencies in their nonattainment permitting regulations that affected the EPA's ability to approve Utah's PM₁₀ maintenance plan and that may affect the EPA's ability to approve Utah's PM_{2.5} SIP. These revisions addressed R307-403-1 (Purpose and Definitions), R307-403-2 (Applicability), R307-403-11 (Actual Plant-wide Applicability Limits (PALs)), and R307-420 (Ozone Offset Requirements in Davis and Salt Lake Counties). On June 2, 2016, the EPA entered into a consent decree with the Center for Biological Diversity, Center

for Environmental Health, and Neighbors for Clean Air regarding a failure to act, pursuant to CAA sections 110(k)(2)-(4), on certain complete SIP submissions from states intended to address specific requirements related to the 2006 PM_{2.5} NAAQS for certain nonattainment areas, including the submittal from the Governor of Utah dated August 20, 2013.

On February 3, 2017, the EPA published a final rulemaking (82 FR 9138) to conditionally approve the revisions in Utah's August 20, 2013 submittal, except for the revisions to R307-420. The submittal did not contain the appropriate supporting documentation required for the EPA to take action on R307-420. As a result, the EPA requested an extension for taking action on R307-420, and on December 20, 2016, the EPA was granted an extension which moved the deadline for taking final action on R307-420 from January 3, 2017, to September 29, 2017 (See docket). Utah submitted on June 29, 2017 an additional SIP revision that addresses the lack of appropriate supporting documentation for R307-420.

III. Proposed Action

The EPA is proposing to approve Utah's revisions to R307-420 and R307-403-6, as submitted on August 20, 2013, and June 29, 2017. R307-420 maintains the offset provisions of the nonattainment area new source review (NNSR) permitting program in Salt Lake and Davis Counties after the area is re-designated to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under Utah's ozone maintenance plan. R307-420 was also modified to include the definitions and applicability provisions of R307-403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas) to ensure that the definitions and applicability provisions in R307-420 are consistent with related permitting rules in R307-403. Finally, the revisions to

R307-403-6 reflect the move of the maintenance offset provisions from R307-403 to R307-420. The EPA is proposing to approve these revisions after determining that these revisions are in compliance with federal statutes and regulations.

The EPA first approved the offset provisions for maintenance of the ozone standards in Salt Lake and Davis Counties on May 5, 1995 (60 FR 22277), as part of an action on a Utah submittal updating the NNSR program. At that time, the offset provisions were in R307-1-3.3.3.C. R307-1-3.3.3.C applied an offset ratio of 1.15:1 for new major sources and major modifications in any ozone nonattainment area, but also in Salt Lake and Davis Counties after redesignation to attainment. See 60 FR 22280/3. The submittal, in R307-1-3.1.10, also applied alternative siting analysis requirements to apply to new major sources and major modifications in Salt Lake and Davis Counties after redesignation.

On July 17, 1997 (62 FR 38213), the EPA approved Utah's maintenance plan and redesignation request for Salt Lake and Davis Counties. As part of that action, we approved a revision to R307-1-3.3.3.C that added a contingency measure for Salt Lake and Davis Counties. 62 FR 38215/2. The contingency measure, if triggered, would increase the offset ratio to 1.2:1. 62 FR 28406/1 (May 23, 1997) (proposal).

Subsequently, Utah undertook a complete recodification of their air rules. The NNSR rules in R307-1-3, including the ozone maintenance provisions, were moved to R307-403. The offset and contingency measure provisions in R307-1-3.3.3.C were moved to R307-403-6, and the alternative siting analysis requirements were moved to R307-403-8. The EPA approved most of the recodification, including all of R307-403, on February 14, 2006 (71 FR 7679).

The alternative siting analysis requirements in R307-403-8 were subsequently moved to

R307-401-19, approved by the EPA on February 6, 2014 (79 FR 7072), and then again to R307-403-10, approved by the EPA on February 3, 2017 (82 FR 9138) as part of the action discussed above. This portion of the SIP is up to date with all Utah rule revisions and submittals.

Separately, in 1999 Utah moved the ozone maintenance plan provisions for Salt Lake and Davis Counties (i.e. the ozone offset maintenance provisions and contingency measure provisions) from R307-403-6 to a new section of the UAC, R307-420. As part of this change, Utah added the relevant definitions from the NNSR program to the maintenance plan provisions. By separating the maintenance provisions from the NNSR program, this change improved the clarity of the maintenance provisions, particularly with regard to applicability in Salt Lake and Davis Counties. Correspondingly, Utah removed the maintenance plan language from R307-403-6. However, Utah did not submit these changes as a SIP revision.

Then, on August 20, 2013, Utah submitted revisions to the definitions in the NNSR program that addressed certain deficiencies. Utah also submitted revisions to the corresponding definitions in R307-420. As the EPA had not received the 1999 rulemaking that created R307-420 as a SIP submittal, we were unable to take action on the revisions to R307-420.

Utah's June 29, 2017 submittal addresses this issue by submitting the 1999 rule revisions that created R307-420 and modified R307-403-6. As these rule revisions preserve the ozone maintenance plan requirements for offsets and contingency measures in Salt Lake and Davis Counties while improving the clarity of those requirements, we propose to approve the revisions.

We also propose to approve the subsequent revisions to R307-420, submitted on August 20, 2013, that Utah promulgated to ensure that the definitions and applicability provisions in R307-420 are consistent with related permitting rules in R307-403. For the reasons explained in

our February 3, 2017 notice, the definitions and applicability provisions in R307-403 are consistent with requirements for NNSR programs found in 40 CFR 51.165. While R307-420 is part of the ozone maintenance plan for Salt Lake and Davis Counties and not part of the NNSR program, and therefore not directly subject to the requirements in 40 CFR 51.165, we view the corresponding revisions to the definitions and applicability provisions as strengthening the maintenance plan.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the UDAQ rules promulgated in the DAR, R307-400 Series as discussed in section III of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 30, 2017.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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